

(f) *Precautions against interstate offers and sales.* (1) The issuer shall, in connection with any securities sold by it pursuant to this rule:

(i) Place a legend on the certificate or other document evidencing the security stating that the securities have not been registered under the Act and setting forth the limitations on resale contained in paragraph (e) of this section;

(ii) Issue stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities make a notation in the appropriate records of the issuer; and

(iii) Obtain a written representation from each purchaser as to his residence.

(2) The issuer shall, in connection with the issuance of new certificates for any of the securities that are part of the same issue that are presented for transfer during the time period specified in paragraph (e), take the steps required by paragraphs (f)(1) (i) and (ii) of this section.

(3) The issuer shall, in connection with any offers, offers to sell, offers for sale or sales by it pursuant to this rule, disclose, in writing, the limitations on resale contained in paragraph (e) and the provisions of paragraphs (f)(1) (i) and (ii) and paragraph (f)(2) of this section.

[39 FR 2356, Jan. 21, 1974]

#### § 230.148 [Reserved]

#### § 230.149 Definition of "exchanged" in section 3(a)(9), for certain transactions.

The term *exchanged* in section 3(a)(9) (sec. 202(c), 48 Stat. 906; 15 U.S.C. 77c(9)) shall be deemed to include the issuance of a security in consideration of the surrender, by the existing security holders of the issuer, of outstanding securities of the issuer, notwithstanding the fact that the surrender of the outstanding securities may be required by the terms of the plans of exchange to be accompanied by such payment in cash by the security holder as may be necessary to effect an equitable adjustment, in respect of dividends or interest paid or payable on the securities involved in the exchange, as between

such security holder and other security holders of the same class accepting the offer of exchange.

[2 FR 1382, July 7, 1937]

#### § 230.150 Definition of "commission or other remuneration" in section 3(a)(9), for certain transactions.

The term *commission or other remuneration* in section 3(a)(9) of the Act shall not include payments made by the issuer, directly or indirectly, to its security holders in connection with an exchange of securities for outstanding securities, when such payments are part of the terms of the offer of exchange.

[2 FR 1076, May 26, 1937]

#### § 230.151 Safe harbor definition of certain "annuity contracts or optional annuity contracts" within the meaning of section 3(a)(8).

(a) Any annuity contract or optional annuity contract (a *contract*) shall be deemed to be within the provisions of section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), *Provided*, That

(1) The annuity or optional annuity contract is issued by a corporation (the *insurer*) subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(2) The insurer assumes the investment risk under the contract as prescribed in paragraph (b) of this section; and

(3) The contract is not marketed primarily as an investment.

(b) The insurer shall be deemed to assume the investment risk under the contract if:

(1) The value of the contract does not vary according to the investment experience of a separate account;

(2) The insurer for the life of the contract

(i) Guarantees the principal amount of purchase payments and interest credited thereto, less any deduction (without regard to its timing) for sales, administrative or other expenses or charges; and